

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 20-015-18-1-5-00956-19
Petitioner: My Properties, LLC
Respondent: Elkhart County Assessor
Parcel: 20-11-09-433-017.000-015
Assessment Year: 2018

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. My Properties, LLC (“My Properties”) appealed its 2018 assessment of a four-unit apartment building located at 203 South 6th Street in Goshen to the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA maintained the assessed value at \$119,200. My Properties then timely filed an appeal with the Board electing to proceed under its small claims procedures, seeking further relief.
2. On August 5, 2020, Joseph Stanford, Administrative Law Judge (“ALJ”) held a telephonic hearing on the case. Neither the Board nor the ALJ inspected the property.
3. Myron Borntrager, President, appeared for My Properties and was sworn. Attorney Beth Henkel represented the Assessor. Gavin Fisher, an Indiana licensed residential appraiser, was sworn as a witness for the Assessor.

RECORD

4. The official record for this matter is comprised of the following:

Petitioner Exhibit 1:	Assessor Valuation Forms
Petitioner Exhibit 2:	Rental data collection sheet
Respondent Exhibit R-1:	Appraisal of Subject Property
Respondent Exhibit R-2:	Property Record Card
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

SUMMARY OF CONTENTIONS

6. **The Assessor:**

- a. The Assessor engaged Fisher, an Indiana licensed residential appraiser to evaluate the market value-in-use of the subject property. She contended that the property's assessed value for 2018 was too low as Fisher's appraisal demonstrates. Fisher's appraisal is compliant with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He determined the property's value to be \$145,000 for January 1, 2018. *Fisher testimony, Resp't Ex. R-1.*
- b. In applying Indiana's mass appraisal system, the Assessor gathers rental data from all properties and collects those together on forms. This data reflects more general information, rather than information specific to individual properties. An appraisal focuses on the characteristics of individual properties. *Fisher testimony.*
- c. In reaching his conclusion, Fisher developed the income and sales-comparison approach to value, both of which reflected higher values. In developing the income approach, Fisher applied a GRM of 57.5 to a market rent of \$2,500 per month by using comparable rental properties. Fisher adjusted for the number of rental units in each property. He recognized that the GRM is the preferred method under the Indiana Code. His income approach yielded a value of \$143,750. *Fisher testimony; Resp't Ex. R-1.*
- d. Fisher also developed the sales-comparison approach. He relied on three comparable sales of single-family homes that were converted to multi-unit apartments. He adjusted to account for differences, most significantly the number of rental units. Fisher did not adjust for a sale over one year prior to the assessed valuation date of the subject of January 1, 2018. An adjustment was unnecessary because the market remained stable. His sales-comparison approach yielded a value of \$150,000. *Fisher testimony; Resp't Ex. R-1.*
- e. Finally, Fisher reconciled his final market value-in-use with value from the GRM or income and sales approaches. Accordingly, the Assessor argued that the 2018 assessment should be increased to \$145,000 because a USPAP-compliant appraisal can be the best evidence of value. *Fisher testimony; Resp't Ex. R-1.*

7. **My Properties:**

- a. The subject property's assessment is too high. My Properties contended that the Assessor must develop the assessed value using a gross rent multiplier ("GRM") from the actual rental data for the subject property which would then result in a lower assessed value. Instead, the appraiser arbitrarily chose market data much higher than the actual rent to develop a GRM. My Properties intentionally sets low rent to offset high utility costs renters must pay which regularly reach \$300 to \$400 per month because the building is not well insulated. My Properties would

be unable to rent the units if they set higher rents at market rates. *Borntrager testimony; Pet'r Ex. 1, 2.*

- b. The properties Fisher used to develop his sales comparison approach in the appraisal are not comparable to the subject property. My Properties contended that the sales were too old and occurred two years before the subject's assessment date for the assessed value under appeal. They could not sell the building for the amount the appraiser calculated, at \$145,000. *Borntrager testimony.*
- c. The subject property's 2018 assessed value should be \$90,000 or as an alternative, the amount should revert to \$107,500 which is reflected in the PTABOA decision. My Properties argued that the property has a lower value because of its age and condition. *Borntrager testimony.*

BURDEN OF PROOF

8. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). Ind. Code § 6-1.1-15-17.2 applies to any appeal of an assessed value if the value increased more than five percent (5%) from the prior tax year. Ind. Code § 6-1.1-15-17.2 (a). In that circumstance, the Assessor has the burden of proving that the assessment is correct in an appeal. The assessed value was \$91,100 in 2017 and \$119,200 in 2018. The Assessor accepted the burden of proof. We agree that the Assessor has the burden.

ANALYSIS

9. The Assessor made a prima facie case that the assessed value for 2018 should be raised to \$145,000 based on a USPAP-compliant appraisal and supporting testimony from an Indiana licensed appraiser.
 - a. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost, sales comparison, and the income approach are three generally accepted techniques to calculate market value-in-use. Evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For a 2018 assessment, the valuation date was January 1, 2018. Ind. Code § 6-1.1-2-1.5 (a).
 - c. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *O'Donnell*,

854 N.E.2d at 94. The Assessor in this appeal offered a USPAP-compliant appraisal along with supporting testimony from a licensed residential appraiser to establish a market value-in-use of \$145,000 as of January 1, 2018.

- d. In his appraisal, Fisher developed the sales comparison and income approaches. For the income approach, he used the GRM, which is the preferred method for valuing rental apartments with between one and four units as described in Ind. Code § 6-1.1-4-39 (b).
- e. Indiana has not defined the term GRM by statute or regulation, but it is a commonly used appraisal term. The GRM method develops an income multiplier by looking to market data for sales of comparable income-producing properties and calculating the ratio of the sale price to the gross income at the time of the sale. An opinion of value can then be calculated by multiplying the GRM by the annual income base for the subject property.
- f. In this appraisal, Fisher walked the Board through his comparisons, adjustments, and development of both approaches. He described the three comparable properties in Goshen that he chose as buildings converted to apartments with between two and four units which he adjusted per unit. He utilized market rents for each to develop the GRM, reaching a market value-in-use of \$143,750.
- g. For the sales comparison approach, he compared sales of the three buildings, two of which sold within six months of the subject's assessed valuation. The third sold within two years but he explained that he did not make a time adjustment because the market was stable. After adjusting for the number of units, he reconciled his calculations to reach a market value-in-use for the subject of \$150,000.
- h. Finally, Fisher then reconciled the sales comparison and income approaches using the GRM to reach his market value-in-use of \$145,0000 retroactive to January 1, 2018.
- i. My Properties attempted to impeach the credibility of the appraisal by arguing that the subject's actual rental income, rather than market rent, should be used to determine market value-in-use. This is not a correct approach or understanding of the use of the GRM which utilizes market rents to reach value and which does not merely use the rent of a subject property. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E. 2d 1182, 1185-1186 (Ind. Tax Court 2013).
- j. Additionally, My Properties argued that Fisher should have used sales which were more recent. Fisher explained, however, that two of the sales took place only six months prior to the assessment date. He testified that while the third indeed sold over one year prior to the assessed valuation date, the market in that area at that time remained stable and thus an adjustment for time was not warranted.

- k. My Properties did not successfully rebut the Assessor's prima facie case by proving that the assessed value was wrong or what alternative values should be. It merely made unsupported assertions that the building would not sell at a higher value. Statements that are unsupported by probative evidence are conclusory and do not assist the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

CONCLUSION

10. The Assessor made a prima facie case with the USPAP-compliant assessment and testimony from an Indiana licensed residential appraiser for the 2018 assessed value of \$145,000. She requested that the Board raise the assessed value to reflect the USPAP-compliant appraisal. My Properties did not rebut the Assessor by offering sufficient evidence to establish another, lower value. The Board finds for the Assessor.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board orders the Assessor to change the subject property's 2018 assessed value to \$145,000.

ISSUED: November 4, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.